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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY, INC., Plaintiff, v. DIGITAL POINT SOLUTIONS, INC., SHAWN HOGAN, KESSLER'S FLYING CIRCUS, THUNDERWOOD HOLDINGS, INC., TODD DUNNING, DUNNING ENTERPRISES, INC., BRIAN DUNNING, BRIANDUNNING.COM, AND DOES 1-20, Defendants.	CASE NO.: CV-08-4052 JF **REPLY BY DEFENDANTS TODD DUNNING AND DUNNING ENTERPRISE, INC. TO EBAY'S OBJECTION TO REQUEST FOR JUDICIAL NOTICE** Date: December 12, 2008 Time: 9:00 a.m. Place: Courtroom 3, 5th Floor

Defendants Todd Dunning and Dunning Enterprise, Inc. (collectively "DEI") adopt and join in the arguments and authorities provided to the Reply By Defendants Thunderwood Holdings, Inc., Brian Dunning and BrianDunning.Com to eBay's Objection to Request for Judicial Notice. Therefore, DEI does not restate these arguments here. The complaint by Commission Junction, Inc. filed in Orange County also names Todd Dunning and Dunning Enterprise, Inc. as defendants, and claims that these defendants are parties to the Publisher Service Agreement ("PSA"). In addition, the Court should take judicial notice of eBay's Terms and Conditions which are attached as Exhibits 1-3 to the Declaration of Stewart H. Foreman In Support of the Motion to Dismiss in ruling on the venue issue. eBay's Opposition to the Motion to Dismiss did not object to these documents, nor can eBay properly object since the documents come from eBay. These Terms and Conditions are incorporated in the PSA.

For these reasons, DEI respectfully requests that the Court take judicial notice of the referenced documents for purposes of the venue issue under F. R. Civ. Proc. 12(b)(3) raised by the motion to dismiss.

Dated: November 26, 2008

FREELAND COOPER & FOREMAN LLP

By: ___________/s/__________________
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